

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANNIE M. ROSS and U.S. POSTAL SERVICE,  
POST OFFICE, Pittsburgh, Pa.

*Docket No. 97-1902; Submitted on the Record;  
Issued June 9, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated compensation benefits effective March 3, 1996.

The Office accepted appellant's claim for right sacroiliac sprain with radiculopathy and chronic low back syndrome secondary to degenerative disc disease resulting from her February 25, 1982 employment injury. The Office also accepted appellant's recurrent disability occurring on April 6, 1983, August 25, 1988 and June 20, 1990. Appellant made several attempts to return to work but stopped working on August 25, 1988. The Office paid appellant temporary total disability benefits.

In his report dated July 19, 1995, Dr. Robert M. Yanchus, a Board-certified orthopedic surgeon and a second opinion physician, considered appellant's history of injury, and performed a physical examination. He found there was localized tenderness of the lumbar spine from L2 to the sacrum with no muscle spasm noted. Dr. Yanchus stated that there were no objective findings to demonstrate a current sacroiliac strain, radiculopathy, low back syndrome or degenerative disc disease. He stated that a medical report in 1990 stated that appellant had degenerative disc disease at L5 and that this was not an unusual finding at age 53 and "of course, is found in many people who lead, active, vital lives and are completely asymptomatic." Dr. Yanchus stated that appellant's current condition was not solely due to the February 25, 1982 employment injury. He stated that a lumbar myelogram performed in April 1983 which was mentioned in a medical report was normal. Dr. Yanchus stated that "[o]bviously, if there had been a severe injury in 1982 and a ruptured disc had occurred, it would have been demonstrable on the 1983 myelogram." He concluded that appellant had no disability medically connected to the February 25, 1982 employment injury to preclude her from returning to her preinjury job as a postal clerk.

By decision dated February 29, 1996, the Office terminated appellant's compensation benefits effective March 3, 1996, stating that appellant's disability resulting from the

February 25, 1982 employment injury no longer precluded her return to her preinjury occupation.

By letter dated March 15, 1996, appellant requested an oral hearing before an Office hearing representative which was held on October 22, 1996 and submitted the medical report of Dr. Andrew D. Kranik, a Board-certified orthopedic surgeon, dated October 14, 1996. In his report, Dr. Kranik considered appellant's history of injury and performed a physical examination in which he noted severe muscle spasm in the paraspinal muscles of the lumbar spine bilaterally, moderate muscle spasm in the parabdrominal muscles bilaterally, and mild muscle spasm in the gluteal and hamstring muscles bilaterally. He noted diffuse tenderness to palpation over the muscles of the low back, that palpation of the trigger points at L5 and S1 caused the pain to be referred up the back and to be radiated in the right extremity, and tenderness to palpation of the right and left sciatic notches caused the pain to be referred to the lower extremities. Dr. Kranik diagnosed lumbosacral sprain/strain syndrome, lumbosacral radiculitis, and lumbosacral radiculopathy at multiple levels. He stated that his diagnoses and appellant's restrictions including limited sitting and lifting and no bending or climbing ladders were due to her February 25, 1982 employment injury.

At the hearing, appellant described her attempts to work after her February 25, 1982 employment injury but had to stop due to back pain. She stated that she continued to be unable to work due to the back pain and her inability to lift continuously. Appellant stated that attempting to lift objects sometimes caused her to lose her balance. She testified that she was told her compensation would be terminated within 30 days if she did not return to work, she returned to work with restrictions but the restrictions were not followed and she was not given a seat to support her back. Appellant testified that she was currently receiving medical treatment and pain medication from Dr. Kranik. Appellant also testified that due to her back condition, she received assistance in cleaning and preparing meals at home. She stated that her sitting at the hearing caused her to feel pain going down her leg. Appellant also testified that she had no problems with her back prior to 1982.

By decision dated March 3, 1997, the Office hearing representative affirmed the Office's February 29, 1996 decision.

The Board finds that the Office has failed to meet its burden of proof to terminate benefits.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>1</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.<sup>2</sup>

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<sup>1</sup> *Wallace B. Page*, 46 ECAB 227, 229-30 (1994); *Jason C. Armstrong*, 40 ECAB 907, 916 (1989).

<sup>2</sup> *Larry Warner*, 46 ECAB 1027, 1032 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

In his July 19, 1995 report, Dr. Yanchus found no objective findings of a back problem and noted that the medical records indicated that a myelogram performed in 1983 was normal. He stated that if appellant had had a severe injury in 1982 resulting in a ruptured disc, it would have been demonstrable in the 1983 myelogram. He concluded that appellant had no disability resulting from the February 25, 1982 employment injury to preclude her from returning to her preinjury job as a postal clerk. He also inconsistently stated that appellant's current condition was not solely due to the February 25, 1982 employment injury.

In his October 14, 1996 report, Dr. Kranik found that appellant had severe muscle spasm in the paraspinal muscles of the lumbar spine bilaterally, moderate muscle spasm in the parabdominal muscles bilaterally and mild muscle spasm in the gluteal and hamstring muscles bilaterally. He diagnosed lumbosacral sprain/strain syndrome, lumbosacral radiculitis, and lumbosacral radiculopathy at multiple levels. He stated that his diagnoses and appellant's physical limitations were due to her February 25, 1982 employment injury.

The Board finds that a conflict of medical opinion exists between Dr. Yanshu and Dr. Kranik, both Board-certified specialists.<sup>3</sup> Dr. Yanshu based his opinion that appellant had no work-related disability on a normal 1983 myelogram whose results were recorded in another physicians report. Dr. Yanshu inconsistently stated that appellant's back condition was not solely due to the February 25, 1992 employment injury. Dr. Kranik based his opinion that appellant's disability was work related on the objective findings that appellant had numerous symptoms of muscle spasm. The Board will reverse the Office's March 3, 1997 decision as the conflict in the evidence remains unresolved.

Accordingly, the decision of the Office of Workers' Compensation Programs dated March 3, 1997 is hereby reversed.

Dated, Washington, D.C.  
June 9, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

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<sup>3</sup> See 5 U.S.C. § 8123(a).